

REMARKS

Introduction

This communication is in response to the non-final Office Action ("Office Action") mailed April 1, 2009. In the Office Action, the specification was objected to for containing an embedded hyperlink. Claims 1-12 were rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Claims 1-14 were rejected under 35 U.S.C. § 103(a) as unpatentable over various combinations of the cited and applied references.

Applicants note the Office Action indicates the priority date is considered to be March 13, 2003; however, there was no indication of acknowledgment on the Office Action Summary form (PTOL-326) of applicants foreign priority claim. Applicants assume this was an oversight, but nonetheless respectfully request formal acknowledgment of the foreign priority claim and that certified copies of the priority documents have been received in this National Stage application.

With this response, the specification has been amended, as have Claims 1-11 and 13. The amendments to the claims find support in the specification at page 11, line 10 to page 12, line 7, and in FIGURES 4 and 5 of the drawings. Claims 12 and 14 have been canceled, leaving Claims 1-11 and 13 pending. Applicants respectfully request reconsideration and allowance of the pending claims for at least the reasons below.

Information Disclosure Statement

Applicants have submitted, along with this response, an Information Disclosure Statement ("IDS"). Included in the IDS are two previously cited non-patent literature references (Chinese Office Action dated May 30, 2008, and the Wang Pu article), which were cited in the previously filed IDS on August 8, 2008 ("the '08 IDS"). Attached with the current Office Action was a copy of the '08 IDS with all but the above two references considered by the U.S. Patent

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100

and Trademark Office ("the Office"). The Office indicated that the two references were not considered because there were no English translations available. However, the Pu article is in English and the Chinese Office Action was accompanied by an English translation when the '08 IDS was filed. As such, applicants have not submitted new copies of the two references with the newly submitted IDS, and respectfully request that all references in the newly submitted IDS be considered.

Objection to the Specification

It was noted in the Office Action that the specification was objected to for containing a hyperlink, which is impermissible as discussed in M.P.E.P. § 608.01.VII. Since the specification has been amended to remove the hypertext indication, "http://", applicants respectfully request withdrawal of the objection to the specification.

Claims 1-11 Are Directed to Statutory Subject Matter Under 35 U.S.C. § 101

Claims 1-11 were rejected as directed toward non-statutory subject matter under section 101. More particularly, "Claims 1-11 recite the limitation of a media distribution apparatus[, where an] apparatus without specific inclusion of a piece of hardware can be interpreted as software." Applicants appreciate the suggestion in the Office Action that the rejection may be overcome by including "a processor or memory" in the claims. (See Office Action, page 3.) Applicants respectfully submit, however, that Claims 1-11 include "a memory" when independent Claim 1 recites, "a storing section that stores a plurality of media data items." As such, applicants respectfully request withdrawal of the section 101 rejections of Claims 1-11.

Claims 1-11 and 13 Are Patentable Over the Cited and Applied References Under 35 U.S.C. § 103

Under section 103, a *prima facie* case of obviousness is established if "all the claimed elements were known in the prior art and one skilled in the art could have combined the elements

as claimed by known methods with no change in their respective functions, and the combination yielded nothing more than predictable results to one of ordinary skill in the art." *KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S. 398 (2007); M.P.E.P. § 2143.A. Applicants respectfully assert that the combinations of the cited and applied references proposed in the Office Action fail to establish a *prima facie* case of obviousness because not all the elements of Claims 1-11 and 13 were known in the prior art.

Claims 1-11

Claims 1-11 were rejected under 35 U.S.C. § 103(a) as unpatentable over Yonemoto et al. (U.S. Patent Application Publication No. 2003/0162495) in view of Tischer et al. (U.S. Patent Application Publication No. 2008/0192769). Applicants submit, however, that none of the cited and applied references, when taken alone or in combination, teach or suggest all of the features of amended Claim 1. For example, there is no teaching or suggestion in Yonemoto et al. of, among other things, "a media distribution setting section that associates control information and distribution priorities on a per media data item basis."

Yonemoto et al. discloses providing a content transmission server that transmits reproduction information including, timing information and layout information. (See Yonemoto et al., paragraphs [0122], [0123] and [0164].) However, applicants note that Yonemoto et al. fails to teach or suggest "a media distribution setting section that associates control information and distribution priorities on a per media data item basis," as recited in amended Claim 1.

The secondary reference, Tischer et al., discloses transmitting data including "priorities for translation and transmission." (See Tischer et al., paragraph [0077].) However, Tischer et al. discloses providing and transmitting "priorities for translation and transmission when multiple data signals and data formats are received at the interface device," which is distinct from "a media distribution setting section that associates control information and distribution priorities

on a per media data item basis," as recited in amended Claim 1. Tischer et al. provides priorities for multiple data signals and formats, whereas Claim 1 requires "distribution priorities on a per media data item basis."

Consequently, the "media distribution setting section" of amended Claim 1, which "associates control information and distribution priorities on a per media data item basis," is not taught or suggested by Yonemoto et al. alone or when combined with Tischer et al. Therefore, a *prima facie* case of obviousness has not been made. Additionally, since Claims 2-11 contain all the recited features of independent Claim 1 due to their dependencies, a *prima facie* case of obviousness has also not been made for Claims 2-11. Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejections of Claims 1-11 and allowance of the claims for at least the reasons above.

Claim 13

Claim 13 was also rejected under 35 U.S.C. § 103(a) as unpatentable over Yonemoto et al. in view of Tischer et al. As with Claim 1, however, applicants submit that none of the cited and applied references, when taken alone or in combination, teach or suggest all of the features of amended Claim 13. For example, there is no teaching or suggestion in Yonemoto et al. of, among other things, "associating control information and distribution priorities of a plurality of media data items on a per media data item basis."

Similar to the reasoning with regard to Claim 1, Yonemoto et al. describes a content transmission server that transmits reproduction information including timing information and layout information. Tischer et al. discloses transmitting data including "priorities for translation and transmission." As with Claim 1, there is no teaching or suggestion in either Yonemoto et al. or Tischer et al., however, of "distribution priorities of a plurality of media data items on a per media data item basis," as recited in amended Claim 13. Therefore, a *prima facie* case of

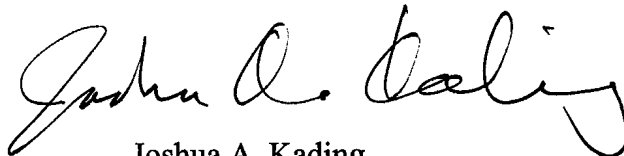
obviousness has not been made regarding Claim 13. Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of Claim 13 and allowance of the claim for at least the reasons above.

Conclusion

Applicants submit that this is a full and complete response to the non-final Office Action mailed April 1, 2009. If there are any remaining issues, or if an Examiner's amendment is needed to correct minor informalities, the Examiner is invited to call the undersigned counsel at the number below.

Respectfully submitted,

CHRISTENSEN O'CONNOR
JOHNSON KINDNESS^{PLLC}

A handwritten signature in black ink, appearing to read "Joshua A. Kading". The signature is fluid and cursive, with the first name "Joshua" being more prominent and the last name "Kading" following in a similar style.

Joshua A. Kading
Registration No. 59,261
Direct Dial No. 206.695.1794

JMS/JAK:jak

LAW OFFICES OF
CHRISTENSEN O'CONNOR JOHNSON KINDNESS^{PLLC}
1420 Fifth Avenue
Suite 2800
Seattle, Washington 98101
206.682.8100